

Appl. No. 10/634,196
Amendment dated November 23, 2005
Reply to Office Action of August 24, 2005

REMARKS

Applicants have received and reviewed a final Office Action dated August 24, 2005. By way of response, Applicants have withdrawn claims 8-11 without prejudice and amended claims 1, 28, and 29. The amended claims find support in the specification at least at page 5, lines 17-19. Claims 1-7, and 13-34 are pending. No new matter is presented. Applicants submit that the pending claims are supported by the specification.

For the reasons given below, Applicants submit that the pending claims are in condition for allowance and notification to that effect is earnestly solicited.

Species Election Requirement

Applicants acknowledge their election of the species of Formula III, claims 1-7 and 12-28. Applicants, without acquiescing to the Examiner's arguments, have withdrawn claims 8-11 from consideration.

Smith et al. in View of Baker et al.

The Examiner rejected claims 29-34 under 35 U.S.C. § 103(a) as being obvious over Smith et al. (US 6,617,303) in view of Baker et al. (US 2002/0119907). Applicants respectfully traverse this rejection.

Independent claim 29 recites a composition "providing a clear concentrate composition and effective antimicrobial activity." The presently claimed methods and compositions can provide reductions in the populations of microorganisms of at least about 0.3 log₁₀ (page 5, lines 7-9). The components of the presently claimed composition are combined in ratios and proportions that result in a clear and stable solution (page 5, lines 17-19). As demonstrated in at least Example I, this clear and stable solution results in increased antimicrobial activity and retention of that antimicrobial activity (pages 39-46).

For the reasons that follow, the presently claimed invention is not obvious over Smith et al. in view of Baker et al. because neither reference alone, or in combination, sufficiently disclose, suggest the presently claimed invention.

Smith et al. focus on cleaning (detergent performance), not antimicrobial action. Specifically, Smith et al. is directed to enhancing detergent performance by utilizing ethoxylated

Appl. No. 10/634,196
Amendment dated November 23, 2005
Reply to Office Action of August 24, 2005

amine surfactants (col. 2, lines 20-23). Smith et al. disclose use of an anionic surfactant composition containing alkoxyated amine surfactants, such as ethoxylated amines (see col. 1, lines 15-20).

In contrast, the presently claimed invention relates to a composition that includes carboxylic acid antimicrobial agent and an alkoxyated amine, that provides a clear concentrate composition, and that is antimicrobially active. Moreover, embodiments of the presently claimed composition can remain stable and clear even at a temperature above 25° C (page 32, lines 17-19). Smith et al. fail to teach a combination of these components at concentrations directed to achieving a clear and stable composition that provides for antimicrobial activity. Smith et al. do not discuss antimicrobial activity, or the clarity of the composition. For at least these reasons, the presently claimed invention is not obvious in view of Smith et al.

Baker et al do not remedy the shortcomings of Smith et al. Baker et al. disclose a composition containing one or more "benefit agents" to disinfect, deodorize, and clean shoes (page 1, paragraph [0002], page 4, paragraph [0077]). Baker et al. disclose the use of any of a variety of disinfecting agents in combination with any surfactant (page 11, paragraph [0184], and page 23, paragraph [0396-0397]). Baker et al. fail to disclose a composition that is clear, stable, and that provides antimicrobial activity.

In contrast, the clarity and stability of the presently claimed composition results in greater antimicrobial activity (see Example 1, pages 39-46). The presently claimed composition achieves a significant reduction in microbial population by combining the various components at certain concentrations and proportions to achieve a clear and stable composition (page 5, lines 17-19 and Example 1, pages 39-46). Such a composition is not taught or suggested by Baker et al. Thus, the presently claimed invention is not obvious in view of Baker et al. either alone or in combination.

Accordingly, based on the foregoing differences, Applicants respectfully submit that neither reference cited in this rejection either alone, or in combination, teach nor suggest the presently claimed compositions and methods. Withdrawal of this rejection is respectfully requested.

Appl. No. 10/634,196
Amendment dated November 23, 2005
Reply to Office Action of August 24, 2005

Baker et al. in View of Smith et al.

The Examiner rejected claims 1-7, 13-17, 19, 20, 22-26, and 28-34 under 35 U.S.C. § 103(a) as being obvious over Baker et al. in view of Smith et al. Applicants respectfully traverse this rejection.

Applicants incorporate by reference the arguments made above regarding Smith et al. and Baker et al. For the reasons stated above, the presently claimed invention is not obvious over Smith et al. in view of Baker et al. because neither reference alone, or in combination, sufficiently disclose or suggest the presently claimed invention. Withdrawal of this rejection is respectfully requested.

WO 95/04459 in View of Smith et al.

The Examiner rejected claims 1-7, 13-17, 18, 19, 22-25 and 28-34 under 35 U.S.C. § 103(a) as being obvious over WO 95/04459 (the '459 publication) in view of Smith et al. Applicants respectfully traverse this rejection.

Independent claims 1, 28, and 29 recite a composition "providing a clear concentrate composition and effective antimicrobial activity." The presently claimed methods and compositions can provide reductions in the populations of microorganisms of at least about 0.3 log₁₀ (page 5, lines 7-9). The components of the presently claimed composition are combined in ratios and proportions that result in a clear and stable solution (page 5, lines 17-19). As demonstrated in at least Example I, this clear and stable solution results in increased antimicrobial activity and retention of that antimicrobial activity (pages 39-46).

The '459 publication fails to disclose or suggest the presently claimed invention. The '459 publication discloses a composition including a "carrier and an antimicrobial agent of octanoic carboxylic acid and a sulfur compound" (page 6, lines 24-26). The '459 publication discloses that "a specific carboxylic acid, octanoic acid when combined with a sulfur containing compound" provides sanitizing and disinfecting capabilities (page 7, lines 33-38). The '459 publication lists several important properties that a sanitizing agent should possess in addition to its microbial efficacy (page 3, lines 30-38, page 4, lines 1-10). Clarity and stability are not among the specifically listed properties.

Appl. No. 10/634,196
Amendment dated November 23, 2005
Reply to Office Action of August 24, 2005

According to the presently claimed invention, the clarity and stability of the composition results in greater antimicrobial activity and retention of that activity (see Example 1, pages 39-46). The presently claimed composition achieves effective reduction in microbial population by combining the various components at certain concentrations and proportions to achieve a clear and stable composition (page 5, lines 17-19 and Example 1, pages 39-46). Such a composition is not taught or suggested by the '459 publication.

The arguments made regarding Smith et al. are incorporated herein by reference. The shortcomings of the '459 publication are not remedied by Smith et al. In sum, neither reference alone, or in combination, teaches the instantly claimed invention, and the Examiner has cited no motivation to combine the two references.

Accordingly, based on the foregoing differences, Applicants respectfully submit that the references cited in this rejection neither teach nor suggest the presently claimed compositions and methods and withdrawal of this rejection is respectfully requested.

The Wulff et al. and Penninger et al. References

The Examiner rejected claim 21 under 35 U.S.C. § 103(a) as being obvious over Baker et al. in view of Smith et al., as applied to the rejected claims above, and further in view of Wulff et al. (US 5,962,399). The Examiner rejected claim 27 under 35 U.S.C. § 103(a) as being obvious over Baker et al. in view of Smith et al. as applied to claims 1-7, 12-17, 19-20, 22-26 and 28, and further in view of Penninger et al. (US 6,228,827). Applicants respectfully traverse these rejections.

Applicants rely on their previous arguments regarding Smith et al. and Baker et al. in response to this rejection. Because Wulff et al. and Penninger et al. fail to remedy the shortcomings of Smith et al. and Baker et al., these rejections cannot be maintained.

Accordingly, based on the foregoing differences, Applicants respectfully submit that the references cited in this rejection neither teach nor suggest the presently claimed compositions and methods and withdrawal of this rejection is respectfully requested.

Appl. No. 10/634,196
Amendment dated November 23, 2005
Reply to Office Action of August 24, 2005

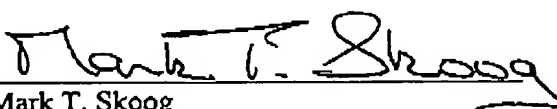
Summary

In summary, Applicants submit that each of claims 1-7, and 13-34 are in condition for allowance, and notification to that effect is earnestly solicited. The Examiner is invited to contact Applicant's undersigned representative at the telephone number listed below, if the Examiner believes that doing so will expedite prosecution of this application.

Respectfully submitted,

MERCHANT & GOULD P.C.
P.O. Box 2903
Minneapolis, Minnesota 55402-0903
(612) 332-5300

Date: Nov 23, 2005


Mark T. Skoog
Reg. No. 40,178
MTS:HJK

23552

PATENT TRADEMARK OFFICE